IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 252 of 1998

with

COMPANY APPLICATION No 222 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : to see the judgements?

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy : of the judgement?

4. Whether this case involves a substantial question : of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :

BOARD FOR INDUSTRIAL & FINANCIAL RECONSTRUCTION

Versus

GUJARAT POLYWEAVE LTD.

Appearance:

1. COMPANY PETITION No. 252 of 1998
   BOARD OPINION for Petitioner
   MR SN SOPARKAR for Respondent No. 1
   MR KI SHAH for Respondent No. 2
   SERVED BY RPAD - (N) for Respondent No. 3

2. COMPANY APPLICATIONNo 222 of 2000
   MR NA SHAIKH for Petitioner No.1
   MR KI SHAH for Respondent No.3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 04/09/2000

ORAL COMMON JUDGEMENT

1. This company petition is registered on receipt of opinion of Board for Industrial and Financial Reconstruction (Board for short), New Delhi vide communication dated 26.10.1998. Opinion of the Board dated 16.9.1998 is received along with copy of the earlier orders dated 23.2.1998 and 6.7.1998. While exercising powers under sec.20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, the Board has recorded opinion that it is just and equitable that M/s Gujarat Polyweave Ltd. should be wound up. When the petition was circulated for the first time before this Court by the Registry, this Court, on 31.7.2000 (Coram: K.M. Mehta,J), passed the following order :-

" Perused the opinion. Notice to the company with respect to which the opinion is received from BIFR i.e. Gujarat Polyweave Ltd., Canara Bank and Bank of Baroda who appear to be secured creditors. Notice returnable on 15.12.1998."

2. At the instance of the Court, Official Liquidator appeared in the matter. Initially, none appeared for Canara Bank and Bank of Baroda. On perusal of papers, it transpires that Canara Bank was Managing Agency and Bank of Baroda was Operating Agency. Advertisement was published by the Official Liquidator at the instance of the Court in Indian Express and Loksatta (Jansatta), both of Baroda Edition. Notice published in the aforesaid news papers was also published in the Official Gazette. The company against whom proceedings have been initiated, is undisputedly situated at Ankleshwar of District Bharuch. It is nobody's case that news papers wherein advertisement was published, do not have any circulation in the area where the company is located.

3. During the course of hearing the learned counsel appearing for the parties, certain queries were raised by this Court by referring to relevant paragraphs of the orders passed by the Board as well as by the Appellate Authority. It was also pointed out that there is no way out but to wind up the respondent company. For the sake of brevity and convenience, relevant paras of the orders

passed by the Board as well as Appellate Authority are reproduced herein below. In para-6 of the Summary Record of proceedings of the hearing held on 16.9.1998 at 11.00 A.M. before Bench of BIFR at New Delhi, it has been observed as under:-

" That the case of M/s Gujarat Polyweave Ltd. has been before the Bench since 1992. A scheme for the rehabilitation of the company was sanctioned by the Board on 4.7.1994. The sanctioned scheme could not take off due to lack of understanding between the promoters and the co-promoters and requisite funds as envisaged in the scheme could not be inducted. The Bench noted that despite ample opportunities having been given to all concerned, there is no rehabilitation proposal with means of finance fully tied up for consideration of the Board. The Bench has, therefore, come to the conclusion that the promoters are not serious in rehabilitating the company nor are they resourceful enough to mobilise the funds required for rehabilitation of the company. Under the circumstances, the Bench confirms its prima facie opinion that the Sick Industrial Company - M/s GPL is not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and hence it is just, equitable and in public interest that it should be wound up u/s 20(1) of the Act. "

4. Certified true copy of the Summary Record of Proceedings of the hearing held on 23.2.1998 before the Bench of BIFR at New Delhi is produced. On perusal thereof, it can be easily concluded that the good efforts were made to reconstruct the company. Para-5 of the said proceedings reads as under :-

" Considering the facts on records and submissions made at today's hearing the Bench observed that the scheme sanctioned by it had failed. As such, the MA was directed to look for change in management of the company by inserting advertisements in two leading national newspapers, one in English and one in regional language inviting offers/bids from the intending bidders giving them four weeks time to submit their proposals. The Bench clarified that the existing promoters may also submit their proposal

to the MA in case they desired to do so. The MA was directed to examine the proposals so received and submit a status report after holding a Joint Meeting with the concerned parties. The minutes of the Joint Meeting shall form a part of MA's status report. The MA was directed to appraise the Bench, in case no proposal was received to enable the Bench to issue a show cause notice for winding up of the company without holding a further hearing. The Bench clarified that it may initiate action u/s 33 of SICA against the existing promoters and co-promoters i.e. Ganapati Group for non-implementation of the sanctioned scheme."

5. Formation of opinion for winding up of the respondent company was challenged before the Appellate Authority for Industrial and Financial Reconstruction, New Delhi and the appellate authority has held as under:-

" On 4.7.94, BIFR had sanctioned a scheme for the rehabilitation of GPL. The scheme was based on induction of a new co-promoter who had to bring in funds to the extent of Rs. 8.75 crores. That scheme failed. It is thereafter that NPL showed interest in the revival of GPL. It is seen from Annexure 5 to the scheme sanctioned by BIFR on 4.7.94 that GPL's liability (after deducting share capital and reserve surplus) as on 31.3.94 were Rs. 48.96 crores. Considering the commercial rates of interest which creditors were entitled to calculate and charge on account of default in payments to them under the scheme sanctioned on 4.7.94, we cannot have any serious doubts about the figure of Rs. 92 crores as outstanding liability quoted by the representative of Bank of Baroda before BIFR at the hearing on 23.2.98. Four year's interest at commercial rates compounded quarterly would raise the figure of liabilities to creditors to about that figure of Rs. 92 Crores quoted by the representative of Bank of Baroda before BIFR. It is not clear to us as to how NPL calculated the liabilities as Rs. 72 Crores. It is seen from the record of BIFR proceedings that all the available information was supplied by the operating agency to NPL. In any case, NPL are not the appellants before us in this appeal nor has any representative of NPL been brought before us to make any commitment that they will be willing to induct funds for the revival of GPL

even though its outstanding liabilities upto 1998 might be of the order of Rs.92 crores."

6. Order passed by the appellate authority is self-explanatory and the financial position of the opponent company is reflected in the order as well as in the summary record of proceedings of hearing reproduced herein above. Findings are not substantially challenged.

7. Learned counsel Mrs. Soparkar, appearing for the respondent company has tried to explain contingency, financial crunch and difficulties which were faced by the respondent company, but I do not see any force and validity in her submissions. Respondent company has no legally arguable case and, therefore, Board Opinion shall have to be accepted. Company is closed since long. Hence, without going into further discussion in detail and in view of compelling circumstances as stated above, this petition is allowed and following order is passed.

8. Respondent Company namely Gujarat Polyweave Ltd., District Bharuch at Ankleshwar is hereby ordered to be wound up. Official Liquidator is appointed as the Liquidator of the respondent company with all powers under sec. 457 of the Companies Act. Formal notification be drawn and served on the Official Liquidator. Bank of Baroda being Operating Agency, is directed to deposit Rs. 15,000/ (Rs. Fifteen thousand only) with Official Liquidator to meet out initial expenses for taking possession of the company as well as its assets. Company Petition No. 252 of 1998 stands disposed of with no order as to costs.

9. So far as Company Application No.222 of 2000 is concerned, one M/s Topaz Travels has filed this application mainly for recovery of sum of Rs. 2,32,985-00 towards outstanding dues of the applicant company from Gujarat Polyweave Ltd. (GPL). Other prayers are also made in the Judge's Summons taken out by the applicant company. Before issuance of formal notice in the Company Application filed by the applicant company, by this judgment, Company Petition No.252 of 1998 is allowed and GPL is ordered to be wound up. Hence, no formal orders are required to be passed in the Company Application filed by the applicant company and it stands disposed of accordingly. No costs. It is, however, observed that it would be open for the applicant company to lodge and/or point out its claim before the Official Liquidator.

4.9.2000 [C.K. BUCH, J]

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